AW KEW LIM & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Chan Sek Keong J.C.) July 31, 1987]

[Singapore — Magistrate's Appeal No. 239 of 1984]

Copyright — Pirated cassette tapes — Possession — Meaning of — Computer printout from Registry of Companies and Businesses — Whether hearsay evidence — Whether admissible as evidence — Failure of counsel to object to inadmissible evidence — Whether fatal to defence case — Whether evidence sufficient to connect accused to tapes — Whether possession has made out a prima facie case — Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 64), s.3(1) — Business Registration Act (Cap. 32), s.16 — Criminal Procedure Code (Cap. 68), s. 369(1) — Evidence Act (Cap.97), s.35.

Copyright — Possession of pirated cassette tapes — Whether mens rea necessary to prove offence under Copyright (Gramophone Records and Government Broadcasting) Act (Cap. 64), s.3(1).

Evidence — Computer printout from Registry of Companies and Businesses — Whether hearsay evidence — Whether admissible — Failure of counsel to object to inadmissible evidence — Whether fatal to defence case — Whether prosecution has made out a prima facie case — Business Registration Act (Cap.32), s. 16 — Evidence Act (Cap. 97), s.35.

The six appellants were jointly charged with and convicted for 19 offences under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act, (Cap.64, 1985 Ed.)(the Act) for having in their possession for sale a number of pirated cassette tapes. They were sentenced to a fine of $200 each for each charge or in default 10 days' imprisonment for each charge. The court further ordered that all tapes seized be forfeited to the complainant for destruction.

At the trial the various cassette tapes which formed the subject matter of the charges were proved to be pirated copies by affidavit evidence and admitted in accordance with section 5 of the Act.

The prosecution also produced in evidence to prove the identities of the partners of Supreme Record Centre a document from the Registry of Companies with the title "INSTANT INFORMATION SERVICE." Counsel for the accused did not object to the admission in evidence of this document. This document was a computer printout obtained from the Registry of Companies and Businesses.

The District Judge called for the defence. The accused elected not to give evidence and they were accordingly convicted. The accused appealed.

On appeal, the main contention of the appellants was that the conviction was wrong as there was insufficient evidence to support an essential ingredient of the offence namely "possession" by the appellants. This submission contained two separate elements: (1) there was no evidence to connect the appellants to the cassette tapes and (2) "possession" in section 3 of the Act required *mens rea*, of which there was no evidence in regard to the appellants.

Held, allowing the appeal: (1) what section 16 of the Business Registration Act (Cap.32. 1985 Ed.) contemplated is a "copy of or an extract from any document filed with the Registrar." The Instant Information sheet contained information retrieved from a data base. The data base itself holds and is a record of all the relevant information abstracted from documents filed with the Registry. The computer printout was not a copy of or an extract from any document filed in the Registry. It was an original document. It contained information retrieved form some kind of data base or a memory bank of a computer. But it was an original document containing evidence which was hearsay;

(2) it is clear law that inadmissible evidence does not become admissible because of failure of counsel to object to its admission;

(3) in the circumstances of the present case there was no admissible evidence which proved that the appellants were at the material time the partners of the firm in whose premises the pirated tapes were seized and thus no link was established between the tapes and the appellants;

(4) the convictions must be quashed and the fines should be refunded. The order for the forfeiture and destruction of the pirated tapes must be confirmed.

Per curiam: ". . . I was not inclined to agree . . . that *mens rea* was necessary to prove an offence under section 3(1) of Cap.64."

Cases referred to:

(1) *Waterson's Trustees* v. *St. Giles Boys Club* [1943] S.C. 369.
(2) *Rex.* v. *Tay Choon Huat* [1947] M.L.J. xxiii
(3) *Toh Ah Loh and Mak Thim* v. *Rex* [1949] M.L.J. 54.

MAGISTRATE'S APPEAL.

V. Ramayah for the appellants.

Gerardine Pang (Mrs.) (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chan Sek Keong J.C.: This is an appeal by all six appellants who were jointly charged with and convicted by the Subordinate Court for 19 offences under section 3(1) of the Copyright (Gramophone Records and Government Broadcasting) Act (now Cap. 64) for having in their possession for sale on or about February 25, 1983 at No. 296 Lucky Plaza, 2nd Floor, Orchard Road, Singapore 0923, a number of pirated copies of gramophone records of various songs which included "Sheena Easton — 9 to 5", "Beatles — I Saw Her Standing There." They were sentenced to a fine of $200 each for each charge or in default 10 days' imprisonment for each charge. The court further ordered that all tapes seized be forfeited to the complainant for destruction.

The evidence adduced by the prosecution was as follows. On February 25, 1983, the police, armed with a search warrant, and in the company of representatives of the record company, entered and searched the shop premises of a firm known as Supreme Record Centre at Lucky Plaza. The party identified and picked out 793 cassette tapes on display which were suspected to be pirated copies of songs which were protected by copyright in Singapore. There were two salesgirls at the shop. One of them telephoned the owners to call at the shop but no one turned up.

At the trial, the various cassette tapes which formed the subject matter of the charges were proved to be pirated copies by affidavit evidence and admitted in accordance with section 5 of the Act.

The prosecution also produced in evidence to prove the identities of the partners of Supreme Record Centre a document from the Registry of Companies with the title "INSTANT INFORMATION SERVICE" (Exhibit P20). Counsel for the accused did not object to the admission in evidence of P20. This document was a computer printout obtained from the Registry of Companies and Businesses. It contained, *inter alia,* the following information: the name of the firm, its constitution (*i.e.* sole proprietorship or partnership), its principal place of business and branches, the date of registration, its activities, the names and addresses of the partners and the manager and their dates of entry to and withdrawal from such positions. At the end of this document is a statement as follows: "The above information is updated to seven days from the date shown below." The date shown below was March 5, 1984 and the document was initialled by an unidentified person "for Registrar of Companies & Businesses."

The above, in short, was the state of the evidence at the close of the prosecution's case. Counsel for the accused made a submission of no case to answer on various grounds which have been abandoned in this appeal. However, counsel for the accused, in and for the purpose of his submission, "conceded that the accused had in their possession for sale the alleged pirated copies of gramophone records" (*i.e.* within the statutory definition of that term).

The District Judge called for the defence. The accused elected not to give evidence and they were accordingly convicted.

On appeal, counsel for the appellants submitted that the conviction was wrong as there was insufficient evidence to support an essential ingredient of the offence, namely "possession" by the appellants. This submission contained two separate elements: (1) there was no evidence to connect the appellants to the cassette tapes and (2) "possession" in section 3 of the Act required *mens rea,* of which there was no evidence in regard to the appellants.

On the first point, counsel submitted that the computer printout from the Registry of Companies & Businesses was hearsay evidence and that evidence from such Registry, to be admissible, must comply with section 16 of the Business Registration Act (Cap.32) which reads as follows:

> "(1) Any person may, upon payment of such fees as may be prescribed, require a copy of a certificate of registration issued to any person, or a copy of or an extract from any document filed with the Registrar, to be certified by the Registrar.
>
> (2) Any copy or extract given under subsection (1), if duly certified to be a true copy or extract under the hand of the Registrar, shall be received as prima facie evidence in any proceedings without proof being given that the certificate was signed by the Registrar."

It was submitted that the computer printout did not satisfy the requirement of section 16 of Cap. 32 on three grounds (a) it was not duly certified to be a true copy; (b) although initialled by someone for the Registrar, it was not [certified] under the hand of the Registrar: see *Waterson's Trustees* v. *St Giles Boys Club;*[1] (c) the computer printout was not a document contemplated by section 16 of Cap. 32. I agreed with this submission on the said grounds. What section 16 contemplates is a "copy of or an extract from any document filed with the Registrar." The Instant Information Sheet contained information retrieved from a data base. The data base itself holds and is a record of all the relevant information abstracted from documents filed with the Registry. The computer printout was not a copy of or an extract from any document filed in the Registry. It was, as conceded by the Deputy Public Prosecutor, an original document. It contained information retrieved from some kind of data base or a memory bank of a computer. But it was an original document containing evidence which was hearsay. Therefore, even if the Registrar had, in this case, purported to certify under his hand the Instant Information Sheet as a true copy of the documents filed in the Registry, it would not have complied with section 16. Had he purported to certify the Instant Information Sheet to have been an extract, it would have been arguable whether the certification would be correct in point

of fact as a document containing abstracted information might not be an extract for the purpose of the Act.

The Deputy Public Prosecutor, in reply, submitted that Exhibit P20 was tendered under section 35 of the Evidence Act (Cap.97). This section provides for the admissibility in any proceedings of computer printouts as evidence of the facts stated therein of which direct oral evidence would be admissible if four conditions relating to the statement and the computer in question are satisfied. This submission had no merit as the prosecution had not adduced any evidence to satisfy any of the four conditions.

The Deputy Public Prosecutor also contended that even if Exhibit P20 were wrongly admitted the prosecution had made out a case to answer on the grounds that the defence counsel (1) had not objected to the admission of Exhibit P20 and had conducted his defence on the assumption that the accused persons were, at the material time, the partners of Supreme Record Centre and (2) had in his submission conceded that the accused were in possession of the pirated tapes.

I did not accept this submission. On the first point, it is clear law that inadmissible evidence does not become admissible because of failure of counsel to object to its admission. On the second ground, counsel's concession was, submitted by counsel for the appellants, made on the assumption (wrongly, as it turned out) that there was admissible evidence to prove that the accused persons were the partners of the firm. In any event, where the prosecution has failed to prove a case which, if unrebutted, would warrant a conviction, then, in my view, the prosecution may not rely on counsel's submission (which, strictly speaking, is merely his view on the evidence, and may be wrong, as in this case) to provide the requisite additional evidence to prove its case. As it turned out in this case, this piece of evidence *i.e.* the identities of the partners, was vital to the prosecution's case. Without it, an essential ingredient of each of the charges was not proved.

As her final submission, the Deputy Public Prosecutor contended that any error in the admission in evidence of Exhibit P20 had not occasioned a failure of justice and that section 396(c) of the Criminal Procedure Code (Cap. 68) applied to this case. Counsel for the appellants contended otherwise and referred to *Rex* v. *Tay Choon Huat*[2] where Murray-Aynsley C.J. held that the improper admission of a chemist's certificate resulting in the conviction of the accused for strong dutiable liquor on his licensed premises could not be said not to have occasioned a failure of justice.

In my view, section 396 had no application where the prosecution had not proved an essential ingredient of an offence. This was not a case where the improper admission of Exhibit P20 had occasioned a failure of justice in the sense contemplated by section 396. This was a case where, if Exhibit P20 had not been admitted, the prosecution had not crossed the threshold of proving a *prima facie* case for the accused to answer.

In regard to the concept of possession, counsel for the appellants submitted that even if Exhibit P20 had been properly admitted, it was not, by itself, evidence that each and every one of the accused was in possession of the pirated tapes. It was contended that possession in section 3 of Cap. 64 had to be proved against each partner and that there was no presumption that things in the possession of one partner was, in law, in the possession of all other partners. Here, of course, no partner was in the shop premises when the pirated tapes were seized. It was further submitted on the authority of *Toh Ah Loh and Mak Thim* v. *Rex*[3] that "possession" in order to incriminate a person, must have the following characteristics:

(a) the person must know the nature of the thing possessed;

(b) he must have in him a power of disposal over the thing; and

(c) he must be conscious of his possession of the thing

and that, in the present case, no evidence had been adduced to show that the accused persons had known that the tapes were made in breach of copyright.

I found it unnecessary to decide on these two submissions, although I was not inclined to agree to the second submission that *mens rea* was necessary to prove an offence under section 3(1) of Cap. 64. As to the first submission, whether or not all the partners, or some of them or the managing partner or the manager might be presumed to be in possession of pirated tapes seized in circumstances as here was an issue which would have to be decided at some other time in some other case.

In the circumstances, I found that there was no admissible evidence which proved that the appellants were at the material time the partners of the firm in whose premises the pirated tapes were seized and thus no link was established between the tapes and the appellants.

Accordingly, I allowed the appeal, quashed the conviction and ordered that the fines be refunded to the appellants. The order for the forfeiture and destruction of the pirated tapes was confirmed.

Appeal allowed.

Solicitors: *Wee, Ramayah & Partners.*

A MALAYSIAN REPORTS

PHUA CHIN CHEW & ORS. v. K.M. & ORS.

[S.C. (Wan Suleiman, Mohamed Azmi & Syed Agil Barakbah S.C. JJ.) February 25 & July 7, 1987]

B **[Kuala Lumpur – Supreme Court Civil Appeal No. 350 of 1985 (Muar High Court Civil Suit No. 154 of 1983)]**

Limitation – Teacher in government teaching service resigned while under attack of schizophrenia – Resignation accepted and service terminated – Striking out action on ground of limitation – Committee appointed – Action by C *Committee filed within 3 years of its appointment but over 3 years after resignation letter – Application to strike out action on ground of limitation – When time begins to run – Mental Disorders Ordinance, 1952, s. 10(1) – Public Authorities Protection Act, 1948, s. 2(a) – Limitation Act, 1953, ss. 3, 24 & 33(1).*

Mental Disorder – Person mentally ill – Resignation D *from service – Letter sent while under attack of schizophrenia – Committee appointed – Limitation of action.*

The respondent K.M., a teacher, joined the government teaching service on January 20, 1971, and was attached to the High School, Muar, teaching there till January, 1977. He was confirmed as a permanent teacher on January 2, 1974, and on January 1, 1976, was placed under the pen- E sionable scheme. He was granted medical leave from September 5, 1976, to November 11, 1976. On November 15, 1976, he was admitted to the Psychiatric Ward of the University Hospital for treatment of mental disorder. On discharge he was transferred on medical advice to Sekolah Menengah Jenis Kebangsaan, Melaka. On April 15, 1977, he was taken ill again and was admitted to the ward for treat- F ment of schizophrenia till May 12, 1977. On June 29, 1977, while labouring under an attack of schizophrenia, the respondent wrote a letter to the appellants purporting to resign from his service as a teacher by giving one month's notice. The said letter of resignation was accepted by the appellants who terminated his services accordingly.

G Subsequently, the respondent's two brothers applied to the court and were appointed Committee of the respondent on June 13, 1982. The Committee filed the present suit on June 2, 1983. The appellants applied to strike out the suit on the ground of limitation. The learned judge dismissed the application and hence this appeal. The question for decision is whether the time of three years began to run H from the date of appointment of the Committee or from the date of the letter of resignation or the acceptance by the Government of the offer to resign.

Held, dismissing the appeal with costs: time begins to run from the date of the appointment of the Committee, and not from the date of the letter of resignation or the acceptance by the Government of the offer to resign. The I action was well within the 3-year period of limitation under section 2(a) of the Public Authorities Protection Act, 1948.

Cases referred to:

(1) *Haji Hussin bin Haji Ali & Ors.* v. *Dato Haji Mohamed bin Yaacob & Ors. & Connected Cases* [1983] 2 M.L.J. 227.